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03
04 UNITED STATES DISTRICT COURT
05 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

06 CECELIA R.,)
07 Plaintiff,) CASE NO. C19-5504-MAT
08 v.)
09 COMMISSIONER OF SOCIAL) ORDER RE: SOCIAL SECURITY
SECURITY,) DISABILITY APPEAL
10 Defendant.)
11 _____)

12 Plaintiff proceeds through counsel in her appeal of a final decision of the
13 Commissioner of the Social Security Administration (Commissioner). The Commissioner
14 denied Plaintiff's applications for Supplemental Security Income (SSI) and Disability
15 Insurance Benefits (DIB) after a hearing before an Administrative Law Judge (ALJ). Having
16 considered the ALJ's decision, the administrative record (AR), and all memoranda of record,
17 this matter is AFFIRMED.

18 **FACTS AND PROCEDURAL HISTORY**

19 Plaintiff was born on XXXX, 1964.¹ She has a high school diploma and some college
20 education, and has worked as a fish cannery worker, owner of a sign-making business, and
21 residential monitor for a corrections department. (AR 295, 379.)

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¹ Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

01 Plaintiff applied for SSI and DIB in December 2015, alleging disability as of January
02 1, 2011.² (AR 257-64.) Those applications were denied initially and upon reconsideration,
03 and Plaintiff timely requested a hearing. (AR 160-68, 171-82.)

04 On December 6, 2017, ALJ Linda Thomasson held a hearing, taking testimony from
05 Plaintiff and a vocational expert (VE). (AR 45-81.) On May 24, 2018, the ALJ issued a
06 decision finding Plaintiff not disabled. (AR 15-31.) Plaintiff timely appealed. The Appeals
07 Council denied Plaintiff's request for review on April 1, 2019 (AR 1-6), making the ALJ's
08 decision the final decision of the Commissioner. Plaintiff appealed this final decision of the
09 Commissioner to this Court.

10 **JURISDICTION**

11 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §
12 405(g).

13 **DISCUSSION**

14 The Commissioner follows a five-step sequential evaluation process for determining
15 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
16 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had
17 not engaged in substantial gainful activity since the alleged onset date. (AR 17-18.) At step
18 two, it must be determined whether a claimant suffers from a severe impairment. The ALJ
19 found severe Plaintiff's obesity, bilateral hand disorder, bilateral knee disorder, bilateral hip
20 disorder, spine disorder, anxiety, and depression. (AR 18-19.) Step three asks whether a

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22 ² At the administrative hearing, Plaintiff amended her alleged onset date to February 1, 2011.
(AR 56.)

01 claimant's impairments meet or equal a listed impairment. The ALJ found that Plaintiff's
02 impairments did not meet or equal the criteria of a listed impairment. (AR 19-21.)

03 If a claimant's impairments do not meet or equal a listing, the Commissioner must
04 assess residual functional capacity (RFC) and determine at step four whether the claimant has
05 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of
06 performing light work, with additional limitations: she can frequently push and pull with her
07 lower extremities, including operation of foot controls. She can never climb ladders, ropes, or
08 scaffolds, and can never crouch or crawl. She can frequently balance, and handle and finger
09 bilaterally. She can occasionally climb ramps and stairs, stoop, and kneel. She can have
10 occasional exposure to extreme cold, extreme heat, wetness, and vibration. She can have no
11 exposure to hazards such as unprotected heights and moving mechanical parts. She can
12 perform jobs requiring level-two reasoning. She can perform simple, routine tasks, and make
13 simple work-related decisions. She can have no public interaction, but can have frequent
14 interaction with supervisors and co-workers. She can tolerate few changes in a routine work
15 setting. (AR 21.) With that assessment, the ALJ found Plaintiff unable to perform her past
16 relevant work. (AR 29-30.)

17 If a claimant demonstrates an inability to perform past relevant work, the burden shifts
18 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make
19 an adjustment to work that exists in significant levels in the national economy. Because the
20 ALJ found Plaintiff capable of performing past relevant work, the ALJ did not proceed to step
21 five. (AR 35-36.)

22 This Court's review of the ALJ's decision is limited to whether the decision is in

01 accordance with the law and the findings supported by substantial evidence in the record as a
02 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
03 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
04 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
05 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
06 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
07 F.3d 947, 954 (9th Cir. 2002).

08 Plaintiff argues the ALJ erred in (1) discounting her subjective symptom testimony,
09 (2) assessing certain medical evidence and opinions, and (3) discounting a lay statement.³
10 The Commissioner argues that the ALJ's decision is supported by substantial evidence and
11 should be affirmed.

12 Subjective symptom testimony

13 The ALJ discounted Plaintiff's subjective allegations of disability for a number of
14 reasons: (1) although Plaintiff alleged her disability began in 2011, there are no medical
15 records until 2013; (2) the medical records do not corroborate Plaintiff's allegations of
16 disabling physical or mental limitations; and (3) the record shows that Plaintiff's limitations
17 were mild, temporary and/or alleviated with treatment. (AR 22-26.) Plaintiff argues that these
18 reasons are not clear and convincing, as required in the Ninth Circuit. *Burrell v. Colvin*, 775
19 F.3d 1133, 1136-37 (9th Cir. 2014).

20 Plaintiff first argues that the ALJ erred in applying an "objective evidence test," but

21 ³ Plaintiff's opening brief also challenges the ALJ's RFC assessment and step-five findings,
22 but in doing so only reiterates arguments made elsewhere. Dkt. 12 at 18-19. Accordingly, these
issues will not be analyzed separately.

01 has not shown that the ALJ rejected Plaintiff's allegations *solely* based on a finding that her
02 allegations were not corroborated by objective evidence, and thus has not shown harmful
03 legal error in this respect. Dkt. 12 at 15; *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir.
04 2001) ("While subjective pain testimony cannot be rejected on the sole ground that it is not
05 fully corroborated by objective medical evidence, the medical evidence is still a relevant
06 factor in determining the severity of the claimant's pain and its disabling effects.").

07 Next, Plaintiff argues that the ALJ erred in simply summarizing the medical evidence,
08 without showing how that evidence undermines her testimony. Dkt. 12 at 15-16. But
09 Plaintiff is mistaken: the ALJ did summarize the records related to Plaintiff's physical and
10 mental limitations, but also provided specific reasoning to explain why those records
11 undermined Plaintiff's allegations. For example, the ALJ explained that the record showed
12 that Plaintiff had at most "slightly restricted range of motion and strength tests", despite
13 complaints of disabling back and leg pain. (AR 23.) The ALJ also noted that Plaintiff
14 complained of disabling hip pain, but the imaging did not reveal any significant abnormalities.
15 (AR 23-24.) The ALJ did acknowledge that Plaintiff have "the most aggressive treatment
16 found in the file" for her knee problems, but found that after her treatment (including surgery
17 and physical therapy), Plaintiff eventually reported that she was no longer limited by her
18 knees. (AR 23-24.) The ALJ also noted that Plaintiff's complaints of severe spinal
19 impairment were undermined by unremarkable or mild findings upon imaging, as well as the
20 findings of normal range of motion and full strength in the lower extremities. (AR 24-25.)
21 The ALJ also detailed how the records pertaining Plaintiff's hand impairment showed that it
22 did not result in significant limitations. (AR 25.) Lastly, the ALJ cited evidence showing that

01 Plaintiff did have some mental limitations, but found that her treatment notes and mental
02 status examinations indicated that her limitations were not disabling. (AR 26.) The Court
03 finds that, in light of the ALJ's thorough discussion of the record as well as her rationale for
04 finding that the record was inconsistent with Plaintiff's allegations, Plaintiff has not shown
05 that the ALJ simply meandered through a summary of the medical evidence. *Cf. Brown-*
06 *Hunter v. Colvin*, 806 F.3d 487, 493-94 (9th Cir. 2015) (holding that the ALJ failed to provide
07 specific reasons, allowing for meaningful review where "she simply stated her non-credibility
08 conclusion and then summarized the medical evidence supporting her RFC determination").

09 Plaintiff's summary of her own subjective statements does not identify an error in the
10 ALJ's decision. Dkt. 12 at 16-17. Because Plaintiff has not established error in the ALJ's
11 assessment of her subjective allegations, the Court affirms this part of the ALJ's decision.

12 Medical evidence

13 Plaintiff challenges the ALJ's assessment of various medical opinions, each of which
14 the Court will address in turn.

15 Legal standards

16 In general, more weight should be given to the opinion of a treating doctor than to a
17 non-treating doctor, and more weight to the opinion of an examining doctor than to a non-
18 examining doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not
19 contradicted by another doctor, a treating or examining doctor's opinion may be rejected only
20 for "clear and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396
21 (9th Cir. 1991)). Where contradicted, a treating or examining doctor's opinion may not be
22 rejected without "specific and legitimate reasons" supported by substantial evidence in the

record for so doing.” *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

Peter Weiss, Ph.D.

Dr. Weiss examined Plaintiff twice, in 2015 and 2017, and completed DSHS form opinions on both occasions, describing Plaintiff’s symptoms and limitations. (AR 379-82, 604-08.) The ALJ summarized Dr. Weiss’s conclusions and explained that she gave partial weight to the moderate cognitive and social limitations he assigned because those were consistent with the record and the State agency opinions, but the ALJ found that the marked and severe limitations described by Dr. Weiss were “overstated and not supported by the conventional and conservative treatment the claimant received[.]” (AR 28 (citing AR 95-97, 116-18, 137-39, [155-57], 523-53, 698-743).)

Despite Plaintiff’s challenge to the ALJ’s reasoning, the evidence cited by the ALJ includes references to Plaintiff’s improvement with medication and therapy, as well as her adequate functioning. (*See, e.g.*, AR 537, 541, 542, 546, 548, 550, 702, 704, 705, 711, 715.) The ALJ reasonably found that this evidence is inconsistent with Dr. Weiss’s description of marked and severe limitations in Plaintiff’s ability to maintain a schedule, complete a normal workday, communicate effectively, maintain appropriate behavior, and set goals independently. (*See* AR 381, 606.) Because the evidence cited by the ALJ supports the ALJ’s conclusion, the Court finds no error in the ALJ’s discounting of Dr. Weiss’s opinions based on inconsistency with that evidence. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (inconsistency with the record properly considered by ALJ in rejection of physician’s opinions).

01 Plaintiff also contends that the ALJ erred in purporting to credit the moderate
02 limitations described by Dr. Weiss, but failing to account for them in the RFC assessment.
03 Dkt. 12 at 4. Plaintiff has not shown that any of the moderate limitations identified by Dr.
04 Weiss are inconsistent with the ALJ's RFC assessment, however. The ALJ limited Plaintiff
05 to performing jobs involving simple and routine tasks, involving reasoning level two and only
06 simple work-related decisions, no public interaction, frequent interaction with supervisors/co-
07 workers, and only few changes in the work setting. (AR 21.) The moderate limitations
08 identified by Dr. Weiss are arguably consistent with those capabilities. (See AR 381, 606.)
09 Thus, Plaintiff has not identified an error pertaining to the moderate limitations identified by
10 Dr. Weiss.

11 Claudia Sloan, M.D. & Kristia Andreas, FNP-C

12 Dr. Sloan, a treating physician, completed a DSHS form opinion in October 2015
13 describing Plaintiff's physical symptoms and limitations, based on a physical examination.
14 (AR 383-87, 407-11.) Dr. Sloan opined that Plaintiff could perform sedentary work, and
15 indicated that her opinion was valid for six months. (AR 385.)

16 Ms. Andreas completed a form physical opinion in August 2017, indicating that
17 Plaintiff could perform sedentary work, and that her opinion described limitations expected to
18 last 6-12 months. (AR 591-602.)

19 The ALJ gave little weight to the opinions of Dr. Sloan and Ms. Andreas, noting that
20 they both had limited duration, and finding them inconsistent with the medical record and
21 Plaintiff's own statements describing her activities of daily living. (AR 27 (citing AR 325,
22 329-32, 517, 520-21).) That evidence includes an examining physician's opinion that

01 Plaintiff had no limitations as to standing/walking, as well as Plaintiff's reports of her ability
02 to complete household chores, cooking, grocery shopping, and personal care. (AR 325, 329-
03 32, 517, 520-21.) The ALJ reasonably found this evidence to be inconsistent with the
04 opinions of Dr. Sloan and Ms. Andreas, and did not err in discounting them on that basis, as
05 well as based on the opinions' limited duration. *See Rollins v. Massanari*, 261 F.3d 853, 856
06 (9th Cir. 2001) (affirming an ALJ's rejection of a treating physician's opinion that was
07 inconsistent with the claimant's level of activity); 20 C.F.R. §§ 404.1505, 1509 (to meet
08 definition of disability, claimant must have a severe impairment preventing work; impairment
09 must have lasted or be expected to last at least twelve months).

10 Gary Gaffield, D.O.

11 Dr. Gaffield performed a consultative physical examination of Plaintiff in April 2016
12 and wrote a narrative report describing her symptoms and limitations. (AR 516-21.) In
13 relevant part, Dr. Gaffield opined that Plaintiff could perform postural activities occasionally,
14 but should avoid heights, scaffolding, ladders, objects in her pathway, irregular surfaces,
15 moving surfaces, and unprotected areas. (AR 521.) The ALJ gave partial weight to Dr.
16 Gaffield's conclusions, finding that his opinion that Plaintiff was limited to occasionally
17 performing postural activities was understated, and that Dr. Gaffield overstated Plaintiff's
18 abilities as to balancing. (AR 27.) The ALJ found the remainder of Dr. Gaffield's opinion to
19 be consistent with the State agency opinions. (*Id.*)

20 Plaintiff argues that the ALJ erred in crediting the majority of Dr. Gaffield's opinion,
21 because his conclusions were inconsistent with his own findings as well as the remainder of
22 the medical record. Dkt. 12 at 7. Plaintiff does not identify any particular inconsistency,

01 however, and thus this argument is unsupported and rejected. *See Indep. Towers of Wash. v.*
02 *Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (declining to address assertions
03 unaccompanied by legal arguments: “We require contentions to be accompanied by
04 reasons.”).

05 State agency opinions

06 Plaintiff argues that the ALJ erred by giving partial weight to the State agency
07 opinions, because the State agency reviewers did not have access to Plaintiff’s entire file.
08 Dkt. 12 at 8. The ALJ acknowledged this fact, but nonetheless herself considered the State
09 agency opinions in light of the record as a whole, and found that they were partially consistent
10 with the longitudinal record. (AR 27-29.) Plaintiff has not identified an error in the ALJ’s
11 weighing of the State agency opinions, because she has not shown or even argued that they
12 were inconsistent with all of the other evidence in the record and should have been discounted
13 to a greater degree. *See Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

14 Plaintiff’s lengthy summary of the medical evidence does not show error in the ALJ’s
15 decision. Dkt. 12 at 8-14. Because Plaintiff has not identified an error in the ALJ’s
16 assessment of the medical opinion evidence, the Court affirms this portion of the ALJ’s
17 decision.

18 Lay evidence

19 Plaintiff’s friend, Ginnie Donner, completed a third-party function report describing
20 Plaintiff’s symptoms and limitations. (AR 304-11.) The ALJ summarized Ms. Donner’s
21 statement, and found that it was generally consistent with Plaintiff’s allegations, but did not
22 describe limitations more restrictive than those found in the RFC assessment. (AR 29.) The

01 ALJ also found that the objective medical record did not support the degree of limitations
02 described by Ms. Donner. (*Id.*)

03 An ALJ's reasons to discount a lay statement must be germane. *See Dodrill v.*
04 *Shalala*, 12 F.3d 915, 919 (9th Cir. 1993) ("If the ALJ wishes to discount the testimony of the
05 lay witnesses, he must give reasons that are germane to each witness."). Plaintiff argues that
06 the ALJ inaccurately found that Ms. Donner did not describe limitations more restrictive than
07 found in the ALJ's RFC assessment. Dkt. 12 at 18. Much of Ms. Donner's statement is
08 indeed consistent with the ALJ's RFC assessment, as Ms. Donner indicated Plaintiff's ability
09 to function in a variety of ways, with some limitations. (AR 304-11.) Ms. Donner did,
10 however, describe walking limitations that are inconsistent with the ALJ's RFC assessment:
11 Ms. Donner opined that Plaintiff can walk 50-100 yards before needing to rest. (AR 309.)
12 Yet an examining physician found that Plaintiff had no standing/walking limitations. (*See* AR
13 520.) Thus, the ALJ did not err in referring to the medical record as a reason to discount Ms.
14 Donner's statement.

15 Because Plaintiff has not shown that the ALJ erred in discounting Ms. Donner's
16 statement, the Court affirms this portion of the ALJ's decision.

17 **CONCLUSION**

18 For the reasons set forth above, this matter is AFFIRMED.

19 DATED this 8th day of April, 2020.

20 

21 Mary Alice Theiler
22 United States Magistrate Judge